IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 2533 OF 2007

Municipal Corporation of
Greater Mumbai .... Petitioner

versus

Abdul Hamid Shaikh ..... Respondent.

Shri A.Y.Sakhare with Shri A.J.Bhor for the petitioner
Shri Prakash Devadas for the respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 18TH APRIL, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing with the consent of parties.

2. The petitioner Municipal Corporation of Greater Bombay, takes exception to the order passed by the Industrial Court in complaint ULP No.295/00 dated 27-2-2007 allowing the complaint filed by the respondent and declaring that the petitioners had committed unfair labour practice under item 6 and 9 of Schedule IV of the MRTP & PULP Act. Further a direction has been issued by the Industrial Court to the preset petitioners to absorb the complaint in the additional temporary post since September 1995 and to provide him monetary benefits since September 1999

after adjusting the payment already made to him.

3. The respondent is temporary ‘badli’ employee being in the employment of the petitioner since the year 1989 onwards as khadabadli employee (seasonal employee). It is also not in dispute that from the year 1989 upto year 1995 the respondent had completed more than 50% of the working days in each year except the year 1993. An agreement was signed between the petitioner and the unions on 13-7-1995 whereunder it was agreed that such of the employees who have put in 50% of the working days in each year prior to 31-5-1995 and have put in 50% of the working days till September 1995 would be absorbed in regular service and accommodated against additional temporary post to be created with effect from 1995. The present respondent was satisfying the criteria for regularisation, except for his inadequate attendance in the year 1993. The reason assigned by the respondent for his inadequate attendance in the year 1993 was that his house was burnt in riot following the Bombay bomb blast and for allied reasons, he did not attend the office and an enquiry was made touching the reasons assigned by the respondent for his inadequate attendance. The petitioner, it is not in dispute, has condoned the inadequate attendance of the respondent in the year 1993. Thus the situation that

urges is that right from 1989 till September 1995 the respondent had infact worked for more than 50% of the days in each year and hence he was entitled to the benefit sought to be extended under the agreement dated 13-7-1995. Despite this clear position, the petitioner did not extend the benefit to the respondent, hence he was constrained to file a complaint before the Industrial Court touching the unfair labour practice falling under item 3,6,9 and 10 of Schedule IV of the Act. The Industrial Court has rightly held that the present petitioner has committed unfair labour practice by denying absorption of the respondent in regular service though he satisfies the terms of the settlement arrived at in between the petitioner on one hand and the union on the other hand. Holding that the respondent was entitled to have the benefit extended, the relief has been granted by the Industrial Court. The entitlement of the respondent to claim regular employment is not in dispute.

4. The learned senior advocate Shri Sakhare appearing for the petitioner has mainly attacked the direction in regard to the payment of monetary benefits from September 1999 till the passing of the order by the Industrial Court. The learned counsel for the petitioner has emphatically contended that the

Industrial Court has mechanically granted monetary benefits which are in the nature of full backwages as a matter of course, as if the same need to follow, the movement a declaration of unfair labour practice is made. The learned counsel for the petitioner has pointed out that there has been deviation from the earlier position of law which could be noticed from the recent judgment of the Supreme Court that backwages does not automatically follow the order of reinstatement or declaration of unfair labour practice. Hence it is urged on behalf of the petitioner that the order to the extent it is issued in direction No.III of the order passed by the Industrial court be quashed and set aside.

5. In all fairness and with a view to put an end to the litigation, the learned counsel for the respondent on instructions from the respondent who is present in the court makes a categorical statement that the respondent is agreeable to reducing his claim of 50% of the monetary benefits and has no objection if the same is released to that extent by modifying the direction contained in the later part of direction NO. III of the order of Industrial Court. It is crystal clear that the respondent is entitled to be absorbed in regular service since 1-9-1995. According to the settlement, this appointment is to be in the

additionally created temporary post. I am of the clear view that if the monetary benefits are reduced to 50% of what has been awarded by the Industrial court, the same would subserve the interest of justice. As stated hereinabove, the respondent has clearly made out a case of commission of unfair labour practice by the petitioner by denying him absorption in regular service in additional temporary post, though he satisfies the criteria laid down in the settlement.

6. In view of the concession extended by the learned counsel for the respondent, I proceed to modify the order passed by the Industrial Court to the extent it proceeds to grant 100% monetary benefits to the respondent from 1999 by reducing the same to 50%. Rest of the order does not need to be interfered with in any manner and the same stands confirmed.

7. In the result, writ petition is partly allowed. Petition fails to the extent it challenges the declaration made by the Industrial Court that the petitioner has indulged in an unfair labour practice covered by item 6,7,8,9 & 10 of schedule IV of MRTP & PULP Act. The other direction as well issued by the Industrial Court which secures absorption of the complaint/respondent in additional temporary post from

1-9-1995 also does not call for any interference and the petition to the extent it challenges the same is rejected. However, the direction issued by the Industrial Court to the petitioner, to release monetary benefits since 1999 after adjusting payment already made to him needs to be interfered with. Instead of granting 100% monetary benefits for the said period, I proceed to grant 50% monetary benefit to the respondent from 1-9-1999 till the date of passing of the judgment and order by the Industrial Court. It is made clear that from the date of judgment and order of the Industrial Court, the respondent will be entitled to receive monetary benefits which are admissible to regularly absorbed employee under the settlement in additional temporary post. Rule mad absolute in the above terms with no order as to costs,

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